

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MAY 18 2005

JAMES W. McCORMACK, CLERK
By: _____
DEP CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

)

4-05 CIV 0600760 JMM

Plaintiff,

)

CIVIL ACTION NO.

v.

)

COMPLAINT

LINDSEY MANAGEMENT COMPANY, INC.
d/b/a EAGLE HILL APARTMENTS
Defendant.

)

JURY TRIAL DEMAND

This cause will be heard by _____
and to Magistrate Judge _____

*Merry
Gerring*

NATURE OF THE ACTION

This is an action under Title I of the Americans With Disabilities Act of 1990 and the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of disability and to provide appropriate make whole relief to Gary Fleeman. Defendant failed to reasonably accommodate Mr. Fleeman and then terminated his employment.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343, and 1345. This is an action authorized and instituted pursuant to Section 107(a) of the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. §12117(a), which incorporates by reference Sections 706(f)(1)

and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The unlawful employment practices alleged below were and are committed in the Eastern District of Arkansas, Western Division.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (the "Commission") is an agency of the United States of America charged with the administration, interpretation, and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §12117(a), which incorporates by reference Section 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1).

4. At all relevant times, Defendant, Lindsey Management Company, Inc. d/b/a Eagle Hill Apartments ("Defendant Employer"), was a corporation doing business in the State of Arkansas and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Employer has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. §12111(5), and Section 101(7) of the ADA, 42 U.S.C. §12111(7), which incorporates by reference Sections

701(g) and (h) of Title VII, 42 U.S.C. §§2000e(g) and (h).

6. The Defendant Employer has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. §12111(2).

STATEMENT OF CLAIMS

7. More than thirty (30) days prior to the institution of this lawsuit, Gary Fleeman filed a charge with the Commission alleging violations of Title I of the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least July of 2003 Defendant Employer has engaged in unlawful employment practices in violation of the ADA Sections 102(a), 102(b)(5), 42 U.S.C. §§12112(a) and 12112(b)(5) at its Eagle Hill facility. These unlawful practices include, but are not limited to, Defendant's failure to accommodate Gary Fleeman in his maintenance job because of his disability, amputation of his lower leg, and subsequently terminating his employment.

9. Gary Fleeman is a qualified individual with a disability who requested an accommodation of one to two days off per week on at least two occasions. Defendant required Mr. Fleeman to work seven days per week for an extended period of time. He experienced problems with his prosthesis, which necessitated additional time off. Prior to his discharge, Mr. Fleeman requested an additional two weeks of leave as an

accommodation. Defendant's manager discharged Mr. Fleeman.

10. The practices alleged above have effectively deprived Gary Fleeman of equal employment opportunities and adversely affected his status as an employee because of his disability.

11. The unlawful employment practices complained of above were intentional.

12. Defendant Employer at all relevant times has been acting with malice or reckless indifference to the federally protected rights of Gary Fleeman, in violation of the ADA, 42 U.S.C. §12101 et seq.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining the Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of disability.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Gary Fleeman by providing appropriate back pay with interest, in an amount to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, reinstatement to his rightful place.

D. Order Defendant Employer to make whole Gary Fleeman by providing compensation for past and future pecuniary losses, including but not limited to, relocation expenses, job search expenses, and medical expenses incurred by Gary Fleeman after his discharge by Defendant Employer that would have been covered by Defendant Employer's benefit plan.

E. Order Defendant Employer to make whole Gary Fleeman by providing compensation for non-pecuniary losses, including emotional pain, suffering, loss of enjoyment of life, humiliation, inconvenience, mental anguish, and embarrassment, in amounts to be determined at trial.

F. Order Defendant Employer to pay Gary Fleeman punitive damages for its malicious and/or reckless conduct, in an amount to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper.

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

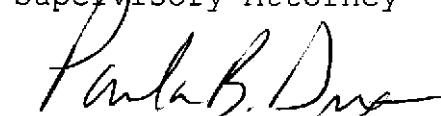
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